

FINAL
Signed:

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on January 27, 1999 at
3:10 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Duane Grimes (R)

Members Excused: SEN. JOHN BOHLINGER (R), SEN. FRED THOMAS (R),
SEN. DON HARGROVE (R),

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: SB 73, SB 114, SB 197, SB 99

Discussion:

CHAIRMAN AL BISHOP discussed the hearing and scheduling of **House**
bills with the committee members before they become backlogged.
The committee members agreed to start hearing **House** bills.

CHAIRMAN BISHOP asked **SEN. EVE FRANKLIN** to report on **SB 103**.

SEN. FRANKLIN reported **SB 103** is still in **Subcommittee**. The next **Subcommittee** meeting is Monday, February 1, 1999, at 10:30 a.m.

EXECUTIVE ACTION ON SB 73

Motion: **SEN. BERRY** moved that **SB 73 DO PASS**.

Substitute Motion: **SEN. FRANKLIN** made a substitute motion that **SB 73 BE TABLED**.

Discussion:

SEN. FRANKLIN stated her rationale. This is a good and worthwhile idea. She was not overwhelmed by the board's preparation nor unrealistic approach to the resources that it will take to actually do it. It has to be done. It will be a big help. It will require some resources, and they really haven't acknowledged that.

CHAIRMAN BISHOP said her motion was a non-debatable motion.

Vote: On Roll Call Vote, with Bartlett, Christiaens, Depratu, Eck, Franklin, and Chairman Bishop voting "yes," and, with Berry, and Grimes voting "no" - Motion carried- 6 - 2 -to TABLE SB 73.

EXHIBIT (ph
s21a01)

EXECUTIVE ACTION ON SB 197

Motion: **SEN. CHRISTIAENS** moved that **SB 197 DO PASS**.

SEN. CHRIS CHRISTIAENS said he has an **Amendment #SB019701.asf** that will make it a better bill. Copies of amendment were passed out to committee members.

EXHIBIT (phs21a02)

Discussion:

SEN. CHRISTIAENS said this amendment clarifies some of the technical concerns in the Fiscal Note. It clarifies who is eligible for counseling as a foster parent who has lost a child in their care. It makes it a much cleaner bill and one that the

Department of Public Health and Human Services doesn't have a problem with.

Motion: SEN. FRANKLIN MOVED AMENDMENT #SB019701.asf to SB 197 BE ADOPTED.

Questions Committee Members:

SEN. DUANE GRIMES questioned the language where we say," a person residing in."

SEN. CHRISTIAENS said that language is stricken.

Susan Fox, Legislative Researcher clarified if they look on the back of the Fiscal Note there is a technical concern because it says "a person who operates a youth care facility and" how some of these are operated by a board. All the board members get to receive counseling. What this does, it would read,"a person who provides substitute care to a foster child who dies while residing in a youth care facility, must be the person providing the substitute care", not just operating the facility.

Vote: Motion carried unanimously - 8 - 0.

Motion/Vote: SEN. CHRISTIAENS moved that SB 197 DO PASS AS AMENDED. Motion carried - 8-0-.

Informational:

SEN. THOMAS and SEN. HARGROVE returned from other meetings.

EXECUTIVE ACTION ON SB 99

CHAIRMAN BISHOP explained SB 99 was re-referred back to Public Health, Welfare and Safety Committee from the **Senate** Floor. It was sent back for an amendment.

Informational:

Susan Fox, said Claudia Clifford is present from the **Insurance Commissioner's Office**.

Claudia Clifford, Insurance Specialist, told them it was at the recommendation of SEN. THOMAS to have the bill come back to this committee. He thought it would be easier to have the committee deal with this amendment, instead of having it offered on the

Floor, since they understood the bill better. One of the person testifying on the bill asked some questions about what would be expected in terms of premiums that would be paid by the widows and dependents of the peace officers. This amendment clarifies what the premiums would be. It would be the same as the premiums they had been paying and what other members of the group pay for premiums.

It also clarifies what their rights are for enrolling future dependents and what their benefits are. It is the same as if they had stayed members of the group and their spouse had not died.

Motion: SEN. CHRISTIAENS moved that **AMENDMENT #SB009902.asf** to **SB 99 BE ADOPTED.**

EXHIBIT (phs21a03)

Vote: Motion **carried unanimously.**

Motion: SEN. CHRISTIAENS moved that **SB99 DO PASS AS AMENDED.**

Vote: Motion **carried 8-0.**

Informational

SEN. FRED THOMAS AND SEN. DON HARGROVE who had been excused returned from another meeting.

EXECUTIVE ACTION ON SB 114

SEN. THOMAS asked **Susan Fox, Legislative Researcher** to explain **AMENDMENTS #SB011402.asf.**

EXHIBIT (phs21a04)

Susan Fox said they were accepted by both the State Fund and the Department of Public Health and Human Services. **Hank Hudson and Nancy Butler** could explain in more detail.

Hank Hudson, DPHHS stated the person who can best explain the amendments is **Nancy Butler, State Fund.**

Nancy Butler, State Fund, said the bill they looked previously in the hearing had some concerns over how they administer this relationship with the outside employer and the Department. And the Department obligated to buy the insurance. The State Fund

insures the Department of Public Health and Human Services. They went to work to come up with some kind of solution. She made reference to #4 of the amendment #SB011402.asf. The Department of Health and Human Services would put on the policy as a named insurer the onsite employer. That would give them at least, on the policy, equal status with the Department as an insurer. This would be to cover the FAIM (Families Achieving Independence in Montana) participants, at the employer's worksite.

Nancy Butler, State Fund said it often gets difficult because they are not receiving a wage. How do you assess premium and how do you pay benefits. It was in the language earlier. The language indicates that minimum wage on a 40 hour week is how you assess premium and how you pay benefits. That makes it much clearer to administer, when you don't have a wage being paid.

SEN. CHRISTIAENS said it sounds fairly simple and straight forward. However, we have community service being performed by a number of different agencies, including the Department of Corrections and Prereleases, where folks are required by a Judge, whether it is a limited jurisdiction or another, to do work for various entities in communities. The only way they have been able to get the Workers' Comp. coverage is the enrollee paying for it, or the place of employment paying for it. He didn't know if anyone has checked on that. They have had a bill similar to this in more than one instance in the past. Workers' Comp. has never supported it and it has always gone down.

The other thing, you talk about it being minimum wage job, but Workers' Comp. isn't always based on the salary as much as the activity that the individual is involved with. If all individuals are doing clerical types of things, this might be fine. However, some of those same people may be in a dangerous type of an occupation, let's say operating equipment. Again, is the coverage adequate pursuant to the job performed.

SEN. THOMAS asked **CHAIRMAN BISHOP** to segregate those questions for **Ms. Nancy Butler** to do one at a time.

SEN. CHRISTIAENS stated there are some problems with it. And who is picking up the cost. The payment of the Workers' Comp. will be coming from the **DPHHS**, and he would assume, TANF (Temporary Assistance for Needy Families).

Nancy Butler said she was trying to quickly find where they did for community service workers, some legislation a number of years

ago. It provides coverage, but it limits it to medical benefits under the Worker's Comp Act.

On his second question, she will let the **DPHHS** speak. She explained, from a factual stand point, how the premium and benefits were under the bill. Prior to this point in time, there wasn't any language like that. Right now the **DPHHS** covers the workers. They reimburse the onsite employer's now for the coverage. The onsite employers policy covers those workers. However, because they are not receiving a wage, the question would be as to whether or not, they would pay any of bi-weekly wage loss compensation benefits, if a worker was injured because they wouldn't be losing a wage. This is a step to provide for what you would call a statutory wage under the Act. You may want to discuss that. They would pay the medical, but the wage loss piece would have been very much in question whether or not we would have been obligated to pay that. You are right in the stand point, if it were typical Workers' Compensation, they would look at the hours worked, the wage paid and the job they were doing.

These workers, you may have to get more information, have been working about 20 hours a week, in various jobs. You'd have to look at how many hours, what job they were doing and then do the wage. From an administrative stand point, they felt it would be easier to go to a 40 hour week, minimum wage and have that set automatically for both benefits and for the premium. That would be up to the committee to decide. If you wanted to do it on the actual hours, actual wages, and actual cost code versus, they were probably going to look at a composite class code. That is all administrative down the road.

SEN. CHRISTIAENS said you are talking about the employee working at the job site is being actually covered by the Workers Comp. policy of the employer with the **DPHHS** reimbursing that employer.

Nancy Butler State Fund clarified that is how it is now.

SEN. THOMAS stated that is how the law is now. It is not the way the bill would be.

Nancy Butler, answered no, this the current law.

SEN. THOMAS clarified, the bill is different. He asked **SEN. CHRISTIAENS** if he was asking what was in the bill, or the current law.

SEN. CHRISTIAENS said he thought they fit together and he was trying to get a clear understanding of exactly what this is doing

because. If this passes, it gives opportunity for some of those other types of community service to come in and do the same type of thing. He is not real sure the legislature should be going down that path.

SEN. THOMAS asked **SEN. CHRISTIAENS** if they could address his questions to **Hank Hudson, DPHHS**, to give them an overview. He is asking questions that are very germane to the whole piece of legislation. **Hank Hudson**, is in the best position to answer those questions in a general scope.

Hank Hudson, DPHHS, said last session the legislature passed a bill that made the site purchase the coverage. Then the **DPHHS** paid the site their costs for the coverage. But it didn't work and they lost quite a few sites for a number of reasons. One was that the people were very adamant that these are not employees, they aren't doing the work of employees, they are not their employees, and they don't want to add them to their policies because they don't want to risk their rates going up. They do not want the blur of distinction that they are clearly not employees. Also they didn't like the paper work, trying to do the calculations, pay up front, get reimbursed later, to be rather cumbersome.

The advice they heard over the biennium, was, for your department to insure them, you take out a policy, put them on your policy. Extend that coverage in whatever way you can to the site. This bill creates a mechanism in which the **DPHHS** buys the policy, and the site is an additional named party on the policy. TANF (Temporary Assistance for Needy Families), money would be paying the premiums and it is an unusual circumstance, a bit out of the usual way these policies are held.

It is an unusual circumstance because one of the things they are trying to do is to provide protection for FAIM participants when they are doing work experience, and those activities. They don't want a blur of distinction in any way that these are employees, and they are not doing the type of job that relates to work that is being done on that site. They are not the equivalent of an apprentice or a trainee in that regard. They are there more to work on basic work site skills, such as timeliness, interaction with other employees, basic kinds of things.

They did go to sites to calculate the benefit based on a 40 hour week, at minimum wage. Prior there would have been no wage calculation, just the medical coverage. They did that and they debated it internally. It is an additional type of protection and probably something they will stick with it if it passes.

SEN. CHRISTIAENS said he hates to keep beating this to death. He originally understood that this was covering injury problems, not wages. However, as he heard **Hank Hudson** talk, its based on a 40 hour week on wages, did he miss something here.

Hank Hudson, DPHHS answered when the bill was put together and in the other discussion about whether this was just for medical coverage or did we want to provide additional protection, like inability to continue working. They needed a calculation to do that. They decided to go that route. They chose the minimum wage and the 40 hour week as the vehicle for that. It would be possible to strike that part. They wouldn't object to striking that part and say, this is for the purposes of health care coverage. The bill appears as it is now and that is not an amendment they are inclined to make at this point.

SEN. CHRISTIAENS replied he was interested in what their attorneys have told them on that. It seems to him with explanation and the way that he reads, that should there be an injury, and the way you have based this, the trainee could, in fact, have a legal basis to go for lost wages.

Hank Hudson DPHHS answered, he believed that was correct. Perhaps we should think about removing the section that speaks to the 40 hour week and the minimum wage.

SEN. ECK asked, if you remove that what would be the affect. Does that mean the person would not be eligible for those benefits or there wouldn't be limitations?

Hank Hudson responded, it would limit their coverage to medical expenses. The argument would be made there is no wage calculation because there is no wage. The benefits being received by a FAIM participate are not wages and are not contingent on the number of hours worked. In some ways it would decrease the protection that the FAIM (Families Achieving Independence in Montana), participants would have.

SEN. THOMAS for the record, clarified, the bill is designed to provide Workers' Compensation from the department. That is the primary large amendment #4. In essence, it starts out saying the **DPHHS** shall provide Workers' Compensation for participants in the FAIM project. Now that in its own, is that simple. It is Workers' Compensation coverage, which is all three areas of medical, disability, or loss of wages and death, loss of life. That coverage is intact. If they are to comply with the law and supply Workers' Compensation, that is, in fact, what we are trying to imply. That is all there is to it. We can not limit that coverage and have Workers' Compensation. You cannot do

that. We provide them with Workers' Comp, they have that. Just like any other employee in the State of Montana.

The problem in the past, has been getting someone to do just that. To provide the Compensation coverage. And say, we want to go to this dealership, for example and work there and start to learn, and move up the ladder. Well they haven't been as willing to work with that because there might be an injury. Then it goes on their record. Maybe there is some phobia there, that shouldn't be, but it is there.

The solution that was brought forward, that we are bringing forward for you to consider, is let's not take this to the business, or the public entity, the county and say you insure them. Let's say, we'll insure them. We will take this on and in addition to that, then we are going to name the entity, whether it be public, or private, as a named insurer on our Workers' Comp. policy. So that they are covered, too.

So when they go to **Franklin Automotive** (example), and we have a FAIM employee there, **Franklin Automotive** is a named insurer on that Workers' Comp. policy with the **DPHHS**. The Department pays the premium, they supply the coverage, both parties are covered, **Franklin Automotive** and the **State of Montana**. And more importantly, that individual is given an opportunity and Workers' Comp. is not a problem any more.

In essence, that is the nucleus of this legislation, trying to remove that from being a problem, trying to remove it so FAIM employees can get work access to work experience.

SEN. CHRISTIAENS stated that he understood everything **SEN. THOMAS** said. He is telling them they are handling it differently than other departments which have done exactly the same thing. The Department of Corrections does not cover the lost wages. They cover only the accident. He doesn't see a whole lot of difference between the populations that are being covered under Workers' Compensation. Since about 1985, he has tried to get this very same thing passed that is in this bill. They have never been able to get it done. So he applauds them for doing it and he assures them there will be more like it following.

SEN. ECK commented that the public schools have similar coverage for work study. She doesn't know they are limited to minimum wage. The problem she sees in one area is there could be a person who suffers from a disability, who has considerable potential of earnings through his or her life time, a lot more than minimum wage. But this isn't her area.

SEN. BARTLETT said that she has an amendment that addresses the wage level. **SEN. THOMAS'S** amendments that are under consideration right now, don't affect the provisions in the bill as it was introduced about the wage levels. It is a much cleaner approach to providing the coverage and seeing that the worksite has some protection. As well as the **DPHHS** having protection of the exclusive remedy. This is a much preferable approach.

Motion: **SEN. THOMAS** moved that his **AMENDMENTS #SB011402.asf** to **SB 114 BE ADOPTED.**

Vote: **MOTION CARRIED.**

Motion: **SEN. BARTLETT** moved that **AMENDMENTS #SB011401.asf** to **SB 114 BE ADOPTED.**

EXHIBIT (phs21a05)

SEN. BARTLETT reiterated, the bill provides people who are participating in this program will be considered to be earning minimum wage and working 40 hours a week for the purposes of basing the premiums and benefits of Workers' Compensation coverage.

Because she shares the concern that **SEN. ECK** has just voiced, which is, if someone is doing something at the worksite that would normally be compensated by that employer at more than a minimum wage, but they are considered to be earning minimum wage and they suffer an injury that has permanent disabling feature to it, they are not eligible under Workers' Compensation laws for vocational rehabilitation assistance to help train them for an occupation that they could do where their disability would not interfere with their ability to do that particular job.

She doesn't know if there are many of instances in which this would happen, but she seems to remember someone in the hearing talking about a person placed at an autobody shop. Recognizing these people are undergoing a training process, her amendment suggests that instead of the language about minimum wage, that the person be insured at a wage that a probationary employee for work of a similar nature at that worksite. That he is not a fully functioning employee, but an employee in training.

Essentially given the nature of the program, and what they have talked about in terms of the work people do, most of these people may well end up being considered minimum wage employees. The **DPHHS** would need to ask the employer, the worksite employer for an indication of, if they had to pay this person what would they pay them, a probationary employee. She just thought of an example where it may be that employer wouldn't pay anybody less

than \$6.00 or \$7.00 an hour. She doesn't know, even on probation and assuming it is a minimum wage equivalent job, may jeopardize some Workers' Compensation benefits for which a participant might otherwise be eligible.

SEN. GRIMES asked **SEN. BARTLETT** if they could have almost the opposite, or the unintended affect of restricting the things that an employer might otherwise offer, like learning skills, and that is the whole purpose of the project. He is concerned about the reporting, the cost issues. Going further, he is wondering if this just might limit what an employer might offer, some of the creativity in some of the opportunities that might be available to the participant.

SEN. BARTLETT answered, the employer at the worksite, private or public entity, under this bill won't be paying Workers' Compensation premium. She doubts that the **DPHHS** would encourage them to limit what someone could learn since the whole purpose of them being at the worksite is to learn some things about worksites.

{Tape : 1; Side : A; Approx. Time Counter : 1 - 35}

SEN. THOMAS said this could affect some benefits. If there is a probationary wage for this spot, the **FRANKLIN AUTOBODY** \$9.00 an hour instead of \$5.00, or what ever it is, he thinks the loss of income to that individual, loss of wages could be affected. Remember these wages are hypothetical. The down side in the meantime would be some additional potential for the Workers' Comp. coverage to the **DPHHS**. A lot of these positions are going to potentially fall into the lower wage scale. That is going to be the case or this amendment could take some sting out of this bill potentially as we use a minimum wage as an arbitrary floor. He doesn't know if it is going to create any trouble in any big sense at all.

SEN. GRIMES asked, without objection, **Hank Hudson** to address the amendment.

Hank Hudson DPHHS, said they respectfully oppose the amendment for a couple of reasons. One, it is an additional complication to what would have been a very straight forward proposal in how they would be asking these sites to identify what type of probationary role or similar job they would linking them up with. Once again creating a situation where they are going to be trying to define something that really isn't there. It's not a probationary position. It's not an employee position. It would be confusing. Also they and said 40 hours a week at minimum wage, actually for anyone in these training positions, 40 hours a week. If they go

to the probationary method and they go to the actual hours, this may end up reducing the coverage people have. Making it a little more complicated and beginning to blur that distinction again. That these are not people who are employed or working at these jobs, they are there for a different purpose. It is something they could deal with if it's in this bill, but it is certainly not the way they would like to see it.

Whenever they do a work experience situation, they enter into an agreement with the site, where they specify what it is they expect the person to learn and what they expect that site to do. It is not linked to a job, a specific job.

SEN. FRANKLIN asked to speak for purposes of discussion. Maybe she is misperceiving **Hank Hudson's** objection. If they substituted probationary employee with entry level employee, would that accomplish the tenor of the amendment without putting in the lingo of a probationary issue that somehow seems to have a complication that suggests problems to them.

SEN. BARTLETT answered her understanding of the **DPHHS** concerns is such that **SEN. FRANKLIN'S** change wouldn't address their issues, but she appreciated the try.

SEN. GRIMES said he would just reiterate his other comment and maybe he didn't frame it well. This could have, even in a minor way, a chilling affect on the opportunities because he knows that for these people to be employed requires a willing employer. They are probably a little skeptical to start with and with the additional reporting requirements. Then what happens with flexibility in a job when they move from one job to another. Do they need additional information to be fed back to the agency to get the work comp rate correct. He sees some potential difficulties to go with the bill the way it is. He doesn't know if it is a real big thing, but he sees it as just another way you make the program less workable for small business.

SEN. DEPRATU said, he is not real familiar with the **FRANKLIN BODYSHOP**, but he is more familiar with Clean Cars Decal Shop, which he has ownership in. He has had some experience with this type of thing. Basically people coming into these types of positions aren't like coming into a big corporation where you have level, after level, after level. It is pretty simple. He probably can't tell the exact wage they pay. But the people are going to be at a certain level, you can say entry level, or probationary level, either one they use. To them entry level is a person who starts in the wash bay. They wash cars and there's no end to the cars that they wash. There's always another car to wash. And that's the entry level position. But they also might

hire an experienced detailer. That person is going to be on probation until they see how they perform, for 3 month, 6 months or whatever. He believes they could use either word, because it could apply. Sometimes they have had a disadvantaged person who is learning to be a detailer. They aren't going to be just a wash person because they have the ability to reach beyond that. But they would be treated like any other employee, and they'd be on a probationary period. It is these types of jobs they are probably looking at. It isn't coming into an accounting office or something else. They are trying to get it too complicated. He really doesn't think there is going to be much risk or a real increase in premium when he thinks the average business is going to be able to say immediately this position will pay X. And that is what it is going to be.

SEN. THOMAS asked **SEN. BARTLETT** there is one item she could help. They had the minimum wage in the bill, that's easy to identify and **Hank Hudson** is indicating which they can all appreciate. The proposed amendment does not identify the work site.

SEN. BARTLETT responded that was a good point.

SEN. THOMAS said if they were to identify it to the spot, a provisionary placed, paid for, work of a similar nature at this worksite, **Susan Fox** could come up with the language. We would narrow it down so in essence, **Hank Hudson**, could do what someone suggested. They go to this place, where they are placing a client-employee, ask what do you pay here on an entry level job. Then they don't have to have this, well we have to have an average of all the different dealerships or whatever it might be. It is just there. If it is \$6.00, that is what it is. He asked if **SEN. BARTLETT** was open to something of that nature.

SEN. BARTLETT answered, yes. Absolutely, because that is what she had in mind and it didn't all get down on paper. She just thought every one would understand it. You know how dangerous that is in this business.

SEN. FRANKLIN asked if the language could be something like "the assigned worksite."

SEN. CHRISTIAENS asked if our esteemed drafter propose them some language.

Susan Fox agreed, "assigned" would work. She wanted to know if they wanted to get entity in there.

Susan Fox read the proposed amendment to the committee. "Premiums and benefits must be paid based upon the wage the probationary

employee is paid for work of a similar nature at the assigned work site."

SEN. THOMAS asked **Hank Hudson**, if they were to add language at the end of **SEN. BARTLETT'S** amendment, "at the assigned work site," does that seem to cause you any trouble as far as what they are trying to DO. Does "assigned worksite" work for you.

Hank Hudson, DPHHS answered it does.

Motion: **SEN. THOMAS** moved **TO AMEND SEN. BARTLETT'S AMENDMENTS** by adding the language, "**at the assigned worksite.**"

Vote: Motion **carried unanimously.**

SEN. THOMAS moved that they revert to **SEN. BARTLETT'S MOTION** that her **AMENDMENT #SB044401. asf** to **SB 114 BE ADOPTED** (see page 10).

SEN. BARTLETT said she had a general question for the committee. Based on **SEN. DEPRATU'S** comments, she wondered if there was any point in putting in the language " a probationary or entry level employee." She doesn't know if that communicates differently for people or what.

The committee voted on **SEN. BARTLETT'S** motion (moved on page 10) that **AMENDMENTS #SB044401.asf** to **SB 114 BE ADOPTED.**

Vote: The **Motion carried -9-1**, with **Sen. Grimes** voting no.

Motion: **SEN. THOMAS** moved that **SB 114 DO PASS AS AMENDED.**

SEN. THOMAS stated they heard during the testimony on this bill the issue of minimum wage and during their discussion today. They know the issue of who is who and how they could come up with this coverage, and who would be named was an issue. He thinks they have resolved that issue, in these amendments the primary amendments they put on the bill. Hopefully this is a solution that can work. To bring more paying people into the workforce. To allow them an opportunity to gain skills that they need and want. So he hopes they can vote for the bill.

Vote: The **Motion carried - 10-0-.**

ADJOURNMENT

Adjournment: 4:35 P.M.

SEN. AL BISHOP, Chairman

MARTHA MCGEE, Secretary

AB/MM

EXHIBIT (phs21aad)